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WEBCOR CONSTRUCTION, INC. dba
WEBCOR BUILDERS

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA - SAN FRANCISCO DIVISION

UNITED STATES OF AMERICA for the use and
benefit of WEBCOR CONSTRUCTION, INC. dba
WEBCOR BUILDERS, and WEBCOR
CONSTRUCTION, INC. dba WEBCOR
BUILDERS,

Plaintiffs,

vs.

DICK/MORGANTI, a joint venture; DICK
CORPORATION; THE MORGANTI GROUP;
AMERICAN CASUALTY COMPANY OF
READING, PENNSYLVANIA; NATIONAL
UNION FIRE INSURANCE COMPANY OF
PITTSBURGH, PA; and DOES 1-10, inclusive,

Defendants.

AND RELATED THIRD-PARTY ACTIONS AND
CROSS-ACTIONS

CASE NO.: 3:07-CV-02564-CRB

**DECLARATION OF JACK HARRINGTON
IN SUPPORT OF WEBCOR'S MOTION
TO LIFT STAY OF PROCEEDINGS**

Date: August 29, 2008
Time: 10:00 a.m.
Dept.: Courtroom 8
Judge: Hon. Charles R. Breyer

I, JACK HARRINGTON, DECLARE:

1. I was the Project Manager for Webcor Construction, Inc. dba Webcor Builders
("Webcor") for the project commonly referred to as the GSA Federal Building Project located in San
Francisco, California ("the Project"). The General Services Administration of the United States of

1 America ("GSA") is the owner of the Project and Defendant Dick/Morganti Joint Venture ("DM") was
2 the prime contractor on the Project.

3 2. As Project Manager, I was involved in all aspects of construction and was responsible
4 for the preparation and submission of Webcor's change order requests ("COR") which are the subject of
5 this lawsuit. I am intimately familiar with the parties' dealings pertaining to this dispute and have
6 personal knowledge of the facts set forth in this Declaration. If called as a witness, I could and would
7 competently testify thereto.

8 3. On or about May 5, 2003, Webcor entered into a written agreement with DM to provide
9 concrete and formwork services for the Project (the "Subcontract"). The Ninth Article of the
10 Subcontract, titled "Claims," defined "claims" as "delay, acceleration, loss of efficiency, extended
11 overhead, or any other type of damages therefrom" suffered by Webcor in the performance of its work
12 due to the acts of DM or others. DM explicitly agreed, in the same Ninth Article that it "agrees to
13 transmit to the Owner, other subcontractors, or other entity any such claims submitted to it by the
14 Subcontractor." DM qualified the purpose of its agreement to pass-through claims as its acting "as a
15 conduit to provide Subcontractor with contractual privity" to the GSA in order for Webcor to "seek
16 reimbursement for damages incurred."

17 4. Under the Thirty-Eighth Article of the Subcontract, titled "Choice of Law and Disputes,"
18 Webcor, under paragraph (d)(v), only agreed to stay any action filed by it as long as Webcor's position
19 was being diligently pursued by DM in the dispute with the GSA and Webcor's claims were being
20 carried forward through DM's prosecution of the claims with the GSA.

21 5. Throughout the course of the Project, Webcor repeatedly put DM on notice regarding
22 significant time and cost impacts resulting from, among other things, deficient project plans and
23 specifications, changes in the scope of Webcor's work and accessibility issues on the Project.

24 6. On or about July 29, 2005, I submitted Webcor's COR No. 60 for equitable adjustment
25 based on the cost and schedule impacts associated with the Project's rebar congestion and increased
26 finish requirements. Because of the magnitude of the COR, I directed DM to immediately forward the
27 claim to the GSA.

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1 7. Three months later, on October 31, 2005, I submitted Webcor's COR Nos. 61 through 65
2 to DM. along with documentation substantiating each claim. Each COR requested DM to immediatcly
3 issue a change order for exccution and payment. DM refused to pass Webcor's COR Nos. 61 through
4 65 through to the GSA for review.

5 I declare under penalty of perjury under the laws of the State of California that the foregoing is
6 true and correct. Executed this 24 day of July, 2008, at San Francisco, California.

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8 By: 
9 JACK HARRINGTON
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